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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 1069

SHERMAN H. SKOLNICK,

Petitioner,

vs.

CHARLES T. MARTIN; and ARTHUR LILLY, and CHARLES R. PERRIGO,

Respondents.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

WALTER T. FISHER,
CHARLES T. MARTIN,
J. WILLIAM HAYTON,
BELL, BOYD, LLOYD, HADDAD & BURNS,
135 South La Salle Street,
Chicago 3, Illinois,
ANdover 3-1131,
Attorneys for Respondent.
Charles T. Martin.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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SHERMAN H. SKOLNICK,

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BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

STATEMENT.

On January 4, 1962, petitioner filed two duplicate law suits against the same defendants making the same allegations. One was filed in the Superior Court of Cook County in Chicago, and the other in the Federal District Court in Chicago.

The Superior Court on March 28, 1962, granted defendant's motion for a nonsuit pursuant to § 48 (1)(c) of the Illinois Civil Practice Act (Ill. Rev. Stat. 1963 Ch. 110 § 48 (1) (c)) which provides for a nonsuit on the ground:

> "(c) That there is another action pending between the same parties for the same cause." (Abst. 16.)

Petitioner appealed this order to the Illinois Supreme Court which transferred the appeal to the Illinois Appellate Court. Petitioner sought review of this order by filing a petition for certiorari, Oct. Term, 1962, No. 807 which was denied, 372 U. S. 953. Thereafter, the Illinois Appellate Court construed § 48 (1)(c) of the Illinois Civil Practice Act as authorizing a nonsuit only where the duplicate case was also pending in an Illinois state court and as not authorizing a nonsuit where the other action was pending in a federal court. *Skolnick* v. *Martin*, 47 Ill. App. 2d 167; 197 N. E. 2d 739.

Thereafter, the Illinois Supreme Court reversed the Appellate Court and affirmed the nonsuit entered by the Superior Court on March 28, 1962, on the ground that § 48 (1)(c) applied where the duplicate case was pending in the federal court. *Skolnick* v. *Martin*, 32 Ill. 2d 55; 203 N. E. 2d 428. Petitioner prays for a Writ of Certiorari to review this judgment affirming the nonsuit.

(Petitioner's duplicate action in the Federal District Court in Chicago was dismissed for failure to state a claim upon which relief could be granted. This dismissal was affirmed. *Skolnick* v. *Martin*, 317 F. 2d 855, and certiorari was denied, 375 U. S. 908, rehearing denied, 375 U. S. 960.)

ARGUMENT.

The petition is based on the theory that the entry of a nonsuit by the Illinois court (pursuant to Ch. 110, § 48 (1)(c)) because of another action pending in the United States District Court between the same parties for the same cause violates the Fourteenth Amendment of the United States Constitution. Petitioner cites no authority supporting his theory. We have found no case where such a fantastic claim was even made. Certainly it is not a violation of the Fourteenth Amendment for the Illinois legislature to determine that as a matter of public policy defendants should not be harassed by identical suits by the same plaintiff and that the dockets of the Illinois courts should not be crowded with such suits.

Further, if a plaintiff is nonsuited pursuant to § 48 (1)(c), the plaintiff has one year from the date of the nonsuit to refile his action. (Ill. Rev. Stat. 1963, Ch. 83 § 24(a).)

Further, in the case at bar the petitioner could have refiled his case in an Illinois state court pursuant to Ch. 83 § 24(a) within one year after the dismissal of his case in the federal court. *Roth v. Northern Assurance Company*, 32 Ill. 2d 40, 203 N. E. 2d 415. The Illinois practice respecting nonsuits raises no constitutional questions.

CONCLUSION.

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

WALTER T. FISHER,
CHARLES T. MARTIN,
J. WILLIAM HAYTON,
BELL, BOYD, LLOYD, HADDAD & BURNS,
135 South La Salle Street,
Chicago 3, Illinois,
ANdover 3-1131,
Attorneys for Respondent,
Charles T. Martin.